IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

WP(C).No. 2648 of 2007(M)

OS.569/2004 of MUNSIFF COURT, CHALAKUDY

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PETITIONER:

JOSE, S/O. DEVASSYKUTTY,
CHOORAKKAL HOUSE, P.O. NALUKETTU,VALUNGAMURI DESOM
KIZHAKKUMURY VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS:

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1. MATHAI, S/O. RAPPAI,
CHOORAKKAL HOUSE, P.O. NALUKETTU,VELUNGAMURI DESOM
KIZHAKKUMURY VILLAGE, MUKUNDAPURAM TALUK.

2. JOSHY, S/O. MATHAI,
CHOORAKKAL HOUSE, P.O. NALUKETTU,VELUNGAMURI DESOM
KIZHAKKUMURY VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.BABU CHERUKARA
SRI.P.JOSHY JOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/02/2007 , THE COURT ON 15/02/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: Ext.P1 dated 17.1.2006, true copy of the common order in I.A.No.145 of 2002 and I.A. No.1051 of 2005 in O.S.No.569 of 2004, Munsiff's Court, Chalakudy.

Ext.P2: Ext.P2 dated 31.10.2006, true copy of the judgment in C.M.A.No.5 of 2006, Prl. Sub Court, Irinjalakuda.

// True copy //

P.A. to Judge

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K.P.BALACHANDRAN, J.

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W.P.(C)NO.2648 OF 2007

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Dated this the 15th day of February 2007

JUDGMENT

The plaintiff in O.S.569/04 on the file of the Munsiff's Court, Chalakkudy is the petitioner. The challenge is against Ext.P1 order passed by the Munsiff on the application of the respondent for a mandatory injunction vide I.A.1051 of 2005 allowing the defendant to install a suction pump boring a hole on the basement of the well on the side of his property which order has been confirmed in appeal by Ext.P2 judgment.

2. It is contended before me by the learned counsel for the petitioner that right granted to the predecessor of the respondent as per the provision in the partition deed is to draw water from the well in item no.1 of A schedule property in the partition deed of 1105 ME which is allotted to the petitioner and that right only enures to the respondents. The relief granted as per the impugned order is not the right specifically provided in the partition deed of 1105 as by the impugned order the courts below have allowed water being drawn using a suction pump, it is contented. Provision to draw water from the well to other sharers cannot be interpreted to mean as provision to pump out the entire water in the well by mechanical means.

3. Counsel for the petitioner however submits that his party is interested in settling the matter at Adalath and till then the orders impugned may not be allowed to be implemented. Prima facie I am not of the view that provision in 1105 partition deed enabling the other sharers to draw water from the well in A schedule item no.1 which is allotted to the predecessor of the plaintiff can be taken as a provision enabling to draw the entire water using mechanical means for the other sharers who are allottees of other plots other than the one in which the well is situated.

In the result, I set aside the orders impugned and remit the matter back to the court below. The parties shall be at liberty to work out their remedies by settling the matter at Adalath if they so choose. However, till such time when either a settlement is arrived at or the suit itself is disposed of on merits the respondent shall not be entitled to install suction pump in the well presently belonging to the petitioner and draw water by such mechanical means. Writ petition is disposed of with the above directions.

K.P.BALACHANDRAN, JUDGE

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